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NEAL M COHEN
2424 SE BRISTOL STREET
SUITE 300
NEWPORT BEACH CA 92660

TM02/0726

EXAMINER

THOMPSON JR, F

ART UNIT

PAPER NUMBER

2165

DATE MAILED:

07/26/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/342,866

Agent(s)

LIN

Examiner

Forest Thompson Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/14/01
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-44 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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DETAILED ACTION

Response to Amendment

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action (*See* Serial No. 09/342,866, Paper #11). The text of those sections of Title 35, U.S. Code not otherwise provided in a prior Office action will be included in this action where appropriate.

2. This action is responsive to the amendment filed 05/14/2001 (see Paper #12).

3. Claims 1, 6, 9, 13, 17-19, 23-24, and 27 have been amended and claim 16 has been deleted by applicant in Paper #12. Claims 28-44 have been added by applicant in Paper #12.

Claims 1-15 and 17-44 are pending.

4. Claims 1-15 and 17-44 have been examined.

Drawings

5. The corrected or substitute drawings were received on 12/08/00. These drawings are considered acceptable by examiner.

Claim Rejections - 35 USC § 112

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6. Claims 1, 13, and 19 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention in Paper #11. Based on applicant's arguments, examiner withdraws the rejection.

Claim Rejections - 35 USC § 103

7. Claims 1-2, 11-15, 18-19, 25-26, 28, 30, 35-36, 39, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent 5,855,008), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1).

As per claims 1, 13 and 19, **Goldhaber et al.** discloses:

- a computer server having access to the global communications network (col. 4 lines 18-24; col. 8 lines 26-30; col. 9 lines 32-35);
- communicating to a buyer a description of a product (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a first request from the buyer to buy the product for a price to be determined within a price range (col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a second request from the buyer to allow the price to be determined based on a performance of the buyer while participating in a Price-Determining-Activity (PDA) (col. 10 lines 39-57; fig. 3 [56, 58, 60]);

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- receiving from the buyer over the global communications network, said data representing the performance of the buyer during the PDA (col. 10 lines 46-57).

Goldhaber et al. does not specifically disclose determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer. However, **Walker et al.** discloses the program is further adapted to initiate a transfer of the value to the consumer in response to the consumer receiving the sales presentation (col. 3 lines 6-8); and an automated sales presentation begins which informs the customer that he will receive \$2 for each question he answers correctly (col. 7 lines 21-23). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Walker et al.** to disclose determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer, because this provides incentive to the buyer to participate.

As per claims 2 and 15, **Goldhaber et al.** discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

As per claim 11, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 12, **Goldhaber et al.** discloses the global communication network is the Internet (col. 4 lines 18-24).

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As per claim 14, **Goldhaber et al.** discloses the step of receiving data over the global communications network representing an election of the buyer to select the PDA (col. 10 lines 39-57; fig. 3 [56, 58, 60]).

As per claim 18, **Goldhaber et al.** discloses the price is dependent at least partially upon a bid selected by the buyer (col. 9 lines 32-40; col. 10 lines 9-67; col. 11 lines 1-31).

As per claim 25, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 26, **Goldhaber et al.** discloses the prices is determined at least partially upon an offer received from the buyer (col. 10 line 46 - col. 11 line 31).

As per claim 28, **Goldhaber et al.** discloses the PDA is selected by the buyer.

As per claim 30, **Goldhaber et al.** discloses the PDA is selected by the buyer.

As per claim 35, discloses:

- determining a performance of a buyer during a Price Determining Activity (PDA) (col. 10 lines 39-57); and
- assigning a price to the product, said price being scaled to the performance of the buyer (col. 10 lines 39-57), through providing a payment in the form of digital cash and/or a credit on the consumer's credit card.

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As per claim 36, **Goldhaber et al.** nor **Walker et al.** disclose the step of determining a price range prior to determining the performance of the buyer. However, Official Notice is taken that it was old and well known in the art at the time the invention was made that sellers are in business to be profitable and that pricing for goods is such that profitability is projected to occur by the sellers. To accomplish this, sellers determine price ranges based on quantity and price for an item for sell. It would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Walker et al.** with old and well known art to disclose the step of determining a price range prior to determining the performance of the buyer, because the seller ultimately must make a profit based on selling price and expenses in order to remain in business.

Claim 39 is written as a method and contains the same limitation as claim 11; therefore, the same rejection is applied.

As per claim 41, **Goldhaber et al.** discloses the step of determining a target price prior to determining the performance of the buyer, said target price being selected by the buyer, and wherein the price is not greater than the target price (col. 10 lines 9-38; fig. 2 [50, 52])

8. Claims 3-10, 20-23, 29, 31, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1) and **Rossides** (U.S. Patent No. 5,269,521).

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As per claim 3, **Goldhaber et al.** does not disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer. However, **Rossides** discloses presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer (col. 15 line 63 - col. 16 line 11). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer, because this provides the user an obvious incentive to participate in the activity.

As per claim 4, **Goldhaber et al.** does not specifically disclose presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs. However, **Rossides** discloses presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs (Abstract; col. 3 lines 36-47). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose presenting price determination rules to the buyer over the global communications network, said price

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determination rules being associated with the plurality of PDAs, because this encourages the buyer to buy products.

As per claim 5, neither **Goldhaber et al.** nor **Rossides** disclose the PDA is a video game. However, Official Notice is taken that it was old and well known in the art at the time the invention was made that games, including video games, are used to encourage users (in this case, buyers) to participate in selected activities to increase user participation and make selected activities more appealing to users. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art, **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose the PDA is a video game, because of the popularity with game players of on-line video games.

As per claim 6, **Goldhaber et al.** does not specifically disclose associating the PDA with the product based at least partially upon a number of participants required for execution of the PDA. However, **Rossides** discloses associating the selected PDA with the product based at least partially upon a number of participants required for execution of the PDA (col. 24 lines 1-18). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose associating the PDA with the product based at least partially upon a number of participants required for execution of

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the PDA, because this increases the probability that sufficient buyers will participate in the price-determining activity to achieve satisfactory results in the activity and make a sale.

As per claim 7, **Goldhaber et al.** does not specifically disclose sending the price data to the buyer via the global communications network, said price data representing the price. However, **Rossides** discloses sending the price data to the buyer via the global communications network, said price data representing the price (col. 16 lines 53-67). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al. and Rossides** to disclose sending the price data to the buyer via the global communications network, said price data representing the price, because this informs buyers of product prices which buyers will require before finalizing the sale.

As per claim 8, **Goldhaber et al.** does not specifically disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range. However, **Rossides** discloses accepting offer data from the seller representing an offer from the seller to sell the product within the price range (col. 42 lines 53 - col. 43 line 9). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al., Walker et al. and Rossides** to disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range, because this information is desired by buyers to finalize the sale.

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As per claim 9, **Goldhaber et al.** nor **Walker et al.** specifically disclose the PDA requires participation of at least one participant in addition to the buyer. However, **Rossides** discloses the selected PDA requires participation of at least one participant in addition to the buyer (col. 24 lines 1-18; col. 42 lines 39-51). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose the PDA requires participation of at least one participant in addition to the buyer, because this informs the buyer of requirements for making a purchase at reduced selling prices.

As per claim 10, **Goldhaber et al.** discloses the steps of:

- accepting the first request from the buyer (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2);
- accepting the second request from the buyer (col. 10 lines 39-57; fig. 3); and
- receiving the performance data from the buyer (col. 10 lines 46-57).

Goldhaber et al. does not specifically disclose the above actions in claim 10 are performed by a master controller. However, **Rossides** disclose the above actions in claim 10 are performed by a master controller (col. 16 lines 55-63), using a host computer. Also, **Walker et al.** discloses the customer places a call ... to the central controller and answers questions, being instantly rewarded (col. 8 lines 58-60). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and

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Rossides to disclose the above actions in claim 10 are performed by a master controller, because this provides necessary functionality, as well as customer satisfaction, for the system.

As per claim 20, **Goldhaber et al.**, **Walker et al.** nor **Rossides** specifically disclose the PDA comprises computer-executable code sent to the buyer over the global communications network. Official Notice is taken that it was old and well known in the art at the time the invention was made that computer executable code (e.g., game software) could be downloaded, uploaded, or executed on a system remote from the user operating it. It would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art with **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose the PDA comprises computer-executable code sent to the buyer over the global communications network, since this is one way that the user may be provided access to the PDA software in order to participate in the PDA activity.

As per claim 21, **Goldhaber et al.** discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

As per claims 22 and 23, **Goldhaber et al.** does not disclose the price is determined at least partially upon an offer received from the buyer, nor determining the price based at least

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partially upon a competition between the buyer and the at least one person using the selected PDA. However, **Rossides** discloses:

- the price is determined at least partially upon an offer received from the buyer (ABSTRACT).
- determining the price based at least partially upon a competition between the buyer and the at least one participant using the selected PDA (col. 3 lines 35-60).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose the price is determined at least partially upon an offer received from the buyer, and determining the price based at least partially upon a competition between the buyer and the at least one person using the selected PDA, because these are obvious characteristics/capabilities that provide desired functionality to the invention.

Claim 29 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 31 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 37 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

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9. Claims 32, 34, 38, and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008)), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1) and **Kelly et al.** (U.S. Patent No. 5,816,918).

As per claim 32, **Goldhaber et al.** nor **Walker et al.** disclose the step of determining a price range prior to determining the performance of the buyer. However, **Kelly et al.** discloses the step of determining a price range prior to determining the performance of the buyer (col. 36 lines 22-55). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Kelly et al.** to disclose the step of determining a price range prior to determining the performance of the buyer, because this information is necessary for the user of the invention to determine profitability when using the invention and evaluating buyer performance.

Claim 34 is written as a method and contains the same limitation as claim 32; therefore, the same rejection is applied.

As per claim 38, **Goldhaber et al.** nor **Walker et al.** disclose the step of setting a difficulty level of the PDA based in part on an average target price for the product. However, **Kelly et al.** disclose *Once the required revenue R is determined for a particular prize, then the average number of prize credits or tickets T that are known to be awarded per game is determined (average ticket payout). It is possible for the game's manufacturer to adjust game*

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difficulty so that, on average, a predetermined number of prize credits will be awarded for each game played (col. 36 lines 35-41). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Kelly et al.** to disclose the step of setting a difficulty level of the PDA based in part on an average target price for the product, because this enhances/affects the profitability of the invention.

As per claim 42, **Goldhaber et al.** nor **Walker et al.** disclose the step of selecting the PDA based at least in part on a minimum price associated with the product. **Kelly et al.** discloses *provides a prize redemption system and method for use with one or more game apparatuses. Players may win "prize credits" by playing the game apparatus, and may then select a prize from a prize menu offered on the game apparatus. The selected prizes and specific prizes may be redeemed using specific prize tickets or coupons* (col. 2 line 62 - col. 3 line 1). It would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Kelly et al.** to disclose the step of selecting the PDA based at least in part on a minimum price associated with the product, because this assists the user in having the desired profitability when implementing the invention.

As per claim 43, **Walker et al.** discloses the step of selecting the PDA based at least in part on a skill level of the buyer (col. 5 line 29 - col. 6 line 3; col. 8 lines 57-61).

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Claim 44 is written as a method and contains the same limitation as claim 38; therefore, the same rejection is applied.

10. Claims 24, 27, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008)), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1), **Rossides** (U.S. Patent No. 5,269,521), and **Kelly et al.** (U.S. Patent No. 5,816,918).

As per claim 24, neither **Goldhaber et al.** nor **Walker et al.** specifically disclose the at least one participant is a second buyer; accepting a second request from the second buy to buy the product for a second price to be determined within the price range; nor determining said second price based at least partially upon the competition. However, **Kelly et al.** discloses:

- the at least one person is a second buyer (col. 3 lines 30-46);
- accepting a second request from the second buy to buy the product for a second price to be determined within the price range (col. 3 lines 30-46); and
- determining said second price based at least partially upon the competition (col. 3 lines 30-46).

It would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Kelly et al.** to disclose the at least one person is a second buyer, accepting a second request from the second buy to buy the product for a second

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price to be determined within the price range, and determining said second price based at least partially upon the competition, because this increases the functionality of the invention.

As per claim 27, neither **Goldhaber et al.** nor **Walker et al.** specifically disclose determining the price based at least partially upon a competition between the buyer and the second participant using the PDA. However, **Kelly et al.** discloses determining the price based at least partially upon a competition between the buyer and the second participant using the PDA (col. 3 lines 30-46). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Kelly et al.** to disclose determining the price based at least partially upon a competition between the buyer and the second participant using the PDA, because this provides an obvious and desirable feature to the invention encourages buyer participation.

Claim 33 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

11. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over as applied to claim 35 above, and further in view of **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1), and Rockoff, Todd E.; Groves, Michael; "Design of an Internet-based system for remote Dutch auctions;" Internet Research:

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Electronic Networking Applications and Policy; vol. 5; n4; pp. 10-16; 1995 (hereafter referred to as **Rockoff**).

As per claim 40, **Goldhaber et al.** nor **Walker et al.** disclose the auction is a reverse auction. However, **Rockoff** discloses *the auctioneer begins at a high price and then descends by steps until a bidder indicates his intention to buy at the price level reached ... the auction continues in this fashion until either the current lot is exhausted or its reserve price has been reached* (pg. 11, 1st col.). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.**, **Kelly et al.**, and **Rockoff** to disclose the auction is a reverse auction, because this is a well known auction format for selling goods.

12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008)), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1), **Kelly et al.** (U.S. Patent No. 5,816,918), and **Rossides** (U.S. Patent No. 5,269,521).

As per claim 17, **Goldhaber et al.**, **Kelly et al.**, and **Walker et al.** do not specifically disclose the PDA includes participation of a second buyer, nor the step of communicating to the buyer and to a second buyer over the global communications network price determination rules. However, **Rossides** discloses the PDA is adapted to accommodate participation of a second participant (col. 24 lines 1-18); and

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Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Kelly et al.**, **Walker et al.**, and **Rossides** to disclose the PDA includes participation of a second participant, because this is an obvious enhancement that would increase the utility of the invention.

Response to Arguments

13. Applicant's arguments with respect to claims 1-15 and 17-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest Thompson whose telephone number is (703) 306-5449. The examiner can normally be reached Monday-Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached at (703) 308-1344.

The fax number for faxes to Technology Center 2700 is (703) 308-9051 or 9052.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

July 24, 2001 /FOT


WYNN COGGINS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100